

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Aedes De Venustas, Inc.,

Plaintiff,

v.

Venustas International, LLC,

Defendant.

1:07-CV-04530-LTS-THK
ECF Case

**STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO
LOCAL CIVIL RULE 56.1**

Pursuant to Local Civil Rule 56.1, Defendant Batallure Beauty LLC formerly known as Venustas International, LLC (hereinafter “Venustas” or “Batallure”), submits this Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

1. Batallure’s President and Chief Executive Officer, Sam Ghusson, and Chairman, Robin Burns-McNeill (“Burns”) are both highly experienced beauty industry executives. June 12, 2007, Deposition Transcript of Mr. Sam Ghusson (“Ghusson Tr.”), 6:16–8:3, 12:5–18, annexed the Declaration of Kristen McCallion, Esq. (“McCallion Decl.”) as Exhibit A; June 18, 2007 Deposition Transcript of Robin Burns-McNeill (“Burns Tr.”), 6:2-11, annexed to the McCallion Decl. as Exhibit B.
2. In or around late 2005, or early 2006, Ghusson and Burns decided to form a creative development company to develop beauty, personal care, home care, and edible products to vertical specialty retailers, which would sell such products to consumers in connection with their own trademarks, and in their own retail stores. Ghusson Tr. 19:12-25; 22:17-23; 44:12-25; Burns Tr. 17:10-18; Transcript of Trial Record, *Aedes De Venustas v.*

Venustas Int'l, LLC, July 13, 2007 (“TT”) 67:24-68:3, annexed to the McCallion Decl. as Exhibit C.

3. Around the early Spring of 2006, Ghusson asked his then assistant at Victoria Secret Beauty, Mina Coccia, to provide him with a list of proposed names that she thought would be good trade names for a company in the beauty industry. Ghusson Tr. 14:12-15:3, 16:16-21.
4. Coccia provided Ghusson with a list of names that meant “beauty” in different languages. One of the proposed names on Coccia’s list was “Venustas”, which Ghusson believed meant “beauty, elegance, [and/or] loveliness” in Latin; other proposed names were “Bella” and “Amore”. Ghusson Tr. 14:21-23, 16:1-15; Burns Tr. 21:24-22:5.
5. Burns thought up a few proposed names, in addition to those on Coccia’s list, for example, “The Pulse” and “Opus”. Ghusson Tr. 16:23-17:17; Burns Tr. 22:22-23:5.
6. On November 9, 2005, Ghusson discussed his new business venture with Mr. Allen Silk, of the law firm Stark & Stark. Ghusson asked Silk to “clear the name” of Ghusson and Burns’ new corporate entity. Ghusson Tr. 18:1-22; McCallion Decl. Ex. D (Stark & Stark attorney time entry record).
7. Mr. Ghusson understood that to “clear the name” meant that Silk would “make sure” “it’s clear for a trademark.” Ghusson Tr. 18:1-22.
8. Ghusson and Burns first formed “RBSG Enterprises, LLC” McCallion Decl., Ex. E.

9. Ghusson and Burns first requested that Silk clear a name proposed by Burns, “The Pulse”, which was Ghusson and Burns’ “first choice”; however, Silk informed Ghusson that “The Pulse” should not be used by Ghusson and Burns. Ghusson Tr. 19:24-21:4; TT 91:1-21
10. Silk was notified that “The Pulse, LLC” was “not available” for use by Ghusson and Burns by Myra Gibson, a paralegal at Stark & Stark. McCallion Dec. Ex F.
11. Ghusson and Burns asked Silk to clear the name “Venustas International”. Ghusson Tr. 21:5-7; TT 91:22-24, 92:17-93:4.
12. On February 6, 2006, Silk asked paralegal Myra Gibson, to check the availabilty of “Venustas” in New Jersey. McCallion Dec., Ex. G.
13. That same day, on February 6, 2006, Gibson informed Silk via email that the “Venustas” “name is available in” New Jersey. McCallion Dec., Ex. H.
14. On March 17, 2006, Ghusson sent Silk an e-mail informing him that that he and Burns had “finally agreed on a name for [their] company so go ahead and register it Venustas International.” McCallion Decl., Ex. I.
15. On March 17, 2006, Myra Gibson, a paralegal at Stark & Stark, sent an e-mail to Silk confirming that “the name Venustas International is available”, to which Gibson attached “a quote for trademark work...” McCallion Decl., Ex. J.
16. Ghusson received an invoice from Stark & Stark dated April 19, 2006, for an amount of One Thousand Five Hundred and Sixty Dollars (\$1,560.00) owed for, among other

things, “Professional services rendered, including corporate and trademark search for name availability...” McCallion Decl., Ex. K.

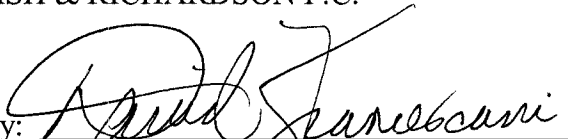
17. Thereafter, on March 21, 2006, Stark & Stark prepared and filed a Certificate of Amendment changing the name RBSG Enterprises, LLC to Venustas International, LLC. McCallion Decl., Ex L.
18. On a “New Jersey LLC Formation Checklist” produced in this litigation by Stark & Stark, the “Conduct name search” task, as well as the “File Certificate of Formation” task, are checked off, indicating that type of work was done for Ghusson and Burns by Stark & Stark. However, the “Client confirmation, re: no trademark work” task is not checked off. McCallion Decl., Ex. M.
19. Ghusson and Burns were soon engaged by two clients, one of which was approached through a personal relationship with Burns, the other of which was engaged through a personal introduction. Burns Tr. 32:19-33:21; TT:74:2-75:3.
20. The article “New In Beauty: Ann Taylor Taps Robin Burns to Develop Collection” that appeared in Women’s Wear Daily on March 16, 2007 was based on a press release issued by Ann Taylor, not Burns or Ghusson. Ghusson Tr. 30:20-33:7; Burns Tr. 39:17-41:6, 43:18-44:17.
21. Venustas did not produce any type of promotional material to solicit new business, nor had Venustas advertised its services or actively sought clients. Ghusson Tr. 34:15-18; TT: 75:4-5; Burns Tr. 11:8-9.

22. Upon realizing that an acquaintance in the beauty industry was under the impression that Venustas was plaintiff Aedes De Venustas, Burns corrected this mistake via e-mail. Burns 49:3-51:16; McCallion Decl., Ex. N (email)
23. Venustas International changed its name to Batallure Beauty LLC and presently does business under that name only. Declaration of Sam Ghusson, ¶ 13.

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: May 23, 2008

By: 

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